

VERMONT DEPARTMENT OF PUBLIC SERVICE

By W Shapiro  
William Shapiro

Subscribed and sworn before me this 6<sup>th</sup> day of August, 1999.

Susan Marie Pittley  
Notary Public  
My commission expires February 10, 2003

## CERTIFICATE OF SERVICE

I, Gail M. Balmer, a secretary in the law offices of McCarthy, Sweeney & Harkaway, P.C., do hereby certify that I have on this 11<sup>th</sup> day of August, 1999, sent copies of the foregoing "REPLY OF THE VERMONT DEPARTMENT OF PUBLIC SERVICE, ET AL. TO COMMENTS OPPOSING PETITION FOR DECLARATORY RULING" by U.S. first class mail, postage prepaid, except where hand delivery is indicated, on the following:

Deborah A. Lathen, Chief \*  
Cable Services Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 3-C740  
Washington, D.C. 20554

William H. Johnson, Deputy Chief \*  
Cable Services Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 3-C742  
Washington, D.C. 20554

Deborah Klein, Chief\*  
Consumer Protection and Competition Division  
Cable Services Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 4-A820  
Washington, D.C. 20554

Steven Broeckaert, Deputy Chief \*  
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Cable Services Bureau  
Federal Communications Commission  
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Washington, D.C. 20554

Karen Kosar, Esquire\*  
Consumer Protection and Competition Division  
Cable Services Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 4-A813  
Washington, D.C. 20554

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1717 East Buckeye  
Spokane, Washington 99207

William Pupo, City Manager  
City of Spokane  
808 West Spokane Falls Boulevard  
Spokane, Washington 99210-3326

Edward Larson, Chief Executive Officer  
MidWest Communications, Inc.  
241 Main Street  
Dubuque, Iowa 52001

Flavio Andrade, Director of Sales  
dotSTAR Communications, L.C.  
6706 N. 9<sup>th</sup> Avenue, Suite C-6  
Pensacola, Florida 32504

David Bolduc, Esquire  
McCollough and Associates, P.C.  
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Austin, Texas 78701

Mr. Ron Sims  
King County Executive  
516 Third Avenue, Room 400  
MS 4CX  
Seattle, Washington 98104

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Popeo, P.C.  
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Bienstock & Clark  
5360 Holiday Terrace  
Kalamazoo, Michigan 49009

Aaron I. Fleischman, Esquire  
Arthur H. Harding, Esquire  
Craig A. Gilley, Esquire  
Paul W. Jamieson, Esquire  
Stuart Feldstein, Esquire  
Susan A. Mort, Esquire  
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Michael S. Schooler, Esquire  
Diane B. Burstein, Esquire  
National Cable Television Association, Inc.  
1724 Massachusetts Avenue, N.W.  
Washington, D.C. 20036

Susan Eid, Vice President of Federal Relations  
MediaOne Group, Inc.  
1919 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

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Kelley, Drye & Warren LLP  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20036

  
Gail M. Balmer

\* Hand Delivered



Ms. Magalie Roman Salas  
October 22, 1999  
Page 1

National Association of Towns and Townships  
444 N. Capitol Street, NW, Suite 208  
Washington, DC 20001-1202

December 17, 1999

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: Internet Ventures, Inc. and Internet On-Ramp, Inc  
Petition for Declaratory Ruling that Internet Service  
Providers are Entitled to Leased Access to Cable  
Facilities Under Section 612 of the Communications  
Act of 1934, as Amended  
Case No. CSR-5407-L

Dear Ms. Salas:

The National Association of Towns and Townships (NATaT) has as its core purpose to strengthen the effectiveness of town and township government. It does so by educating lawmakers and public policy officials about how small town governments operate and by advocating policies on their behalf in Washington, D.C. Last week, NATaT held a meeting at which it voted to support the petition of Internet Ventures, Inc. concerning leased access to cable facilities under Section 612 of the Communications Act as amended.

I understand that FCC action on the petition is imminent and, as Executive Director of NATaT, I write to you on the Association's behalf to urge favorable action on the petition. As an association representing the interests of small local governments, many serving the interests of rural communities, NATaT agrees with the Vermont Department of Public Service (VDPS), another party supporting the IVI petition, that granting internet providers access to cable facilities is particularly important in rural areas, where other broadband alternatives to cable, like DSL technology, are available to few if any residents.

The Commission is no doubt well aware of the various local cable authorities who have asserted their rights to condition cable franchise renewals and transfers on the willingness of

Ms. Magalie Roman Salas

October 22, 1999

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cable operators to grant access to unaffiliated internet service providers. NATaT supports those efforts and its support for the IVI petition should not in any way be construed otherwise. The IVI petition and Vermont's comments in support of that petition, however, point up the importance of internet service providers ((ISPs) as video programming competition for the cable companies. As Governor Dean wrote today in his letter to the Commission, "The cable industry is deploying technology which can have a profound effect on the ability of average Americans to access the Internet, and all its wonders. These wonders include the ability to delivery a rich variety of local and even global video programming -- if Internet Service Providers (ISPs) are given access to high speed cable."

Like Governor Dean, NATaT applauds the Chairman's efforts to encourage cable companies to open their systems to ISPs voluntarily. But, like Governor Dean, NATaT does not believe that its members and their citizens will realize these benefits anytime soon without positive FCC action on the IVI petition. Even AT&T, the only cable operator to have made a promise to offer limited access to unaffiliated ISPs (albeit effective several years from now), has made clear that it will not allow ISPs to compete with it in video programming. According to a report in the December 14, 1999 edition of USA Today, AT&T Broadband & Internet Services CEO Daniel Somers says he won't allow others to freely transmit movies and TV shows via his company's high-speed Internet connections. "AT&T," he is quoted as saying, "didn't spend \$56 billion to get into the cable business "to have the blood sucked out of our vein."

NATaT agrees with Vermont that promoting competition between cable companies and those who could offer alternatives to the cable companies' programming fare is precisely why Congress had the Commission adopt leased access regulations. AT&T's comments reinforce the conclusion that ISPs are the largest threat to cable's market dominance in video programming. Accordingly, NATaT urges the Commission to grant the IVI petition.

Pursuant to Section 1.1206 of the Commission's Rules, an original and two (2) copies of this ex parte presentation are being submitted in the above-noted proceeding.

Sincerely,

Thomas Halicki  
Executive Director





**AFFIDAVIT OF W. SCOTT MCCOLLOUGH**

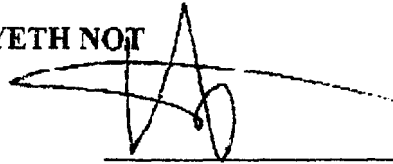
STATE OF TEXAS §

COUNTY OF TRAVIS §

**BEFORE ME**, the undersigned authority on this day personally appeared W. Scott McCollough, who swore upon his oath that the following facts are true and correct:

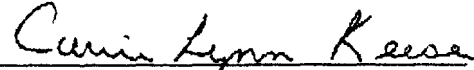
1. "My name is W. Scott McCollough. I am of sound mind, have never been convicted of a felony, am capable of making this affidavit, am over eighteen (18) years of age and am fully competent to testify to the matters stated herein. I have personal knowledge of each of the facts stated herein and each is true and correct to the best of my knowledge and belief.
2. "I serve as counsel to the Texas Internet Service Providers Association ("TISPA").
3. "TISPA is an industry association that represents the interests of the approximate 600 ISPs in Texas. TISPA sought to negotiate a template open access agreement with Time Warner that could be adopted by Texas ISPs. The first contact was on August 25, 2000. A copy of the request for negotiations is attached hereto. Time Warner, however, refused to work with the Association and insisted on directly negotiating with each Texas ISP, even though many ISPs lack the ability or bargaining power to individually strike a reasonable bargain with the cable giant. The desire to negotiate individual contracts indicates a clear intent to potentially discriminate between providers based on any number of possible factors, such as bargaining power or naivete.
4. "Some Texas ISPs were provided the Time Warner Term Sheet. The provisions of that term sheet were consistent with representations made concerning Time Warner's offer to ISPs in general during that time frame. My clients have indicated that few of them, if any, are willing to actually operate under the structure set out in the Terms Sheet, since they view the terms to be unjust, unreasonable, unduly restrictive and overly protective of Time Warner's present and contemplated content and information service endeavors. The price terms alone make such a deal wholly unacceptable, and, in the words of one Texas ISP, simply represent a death sentence to any signatory ISP.

FURTHER AFFIANT SAYETH NOT

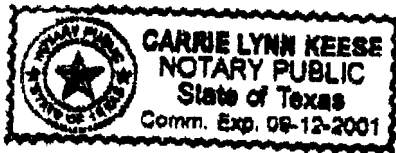


W. Scott McCollough

SWORN TO and SUBSCRIBED before me on the 30<sup>th</sup> day of November, 2000.



Notary Public in and for the State of Texas



Printed or typed name

ATTACHMENT

**McCOLLOUGH AND ASSOCIATES, P.C.**

W. Scott McCollough  
wsmc@smccollough.com

1801 North Lamar, Suite 104  
Austin, Texas 78701  
(V) 512/485-7920 (FAX) 512/485-7921  
<http://www.smccollough.com>

David Bolduc  
bolduc@smccollough.com

August 25, 2000

Ms. Bonnie Blecha  
Time Warner Cable  
290 Harbor Drive  
Stamford, CT 06902

BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Re: Request for Negotiations Between the Texas Internet Service Providers Association and Time Warner Cable

Dear Ms. Blecha:

This firm represents the Texas Internet Service Providers Association ("TISPA"). TISPA is the nation's largest state-level Internet Service Provider ("ISP") industry organization.

I am contacting you on behalf of TISPA ISP members seeking access to Time Warner Cable's cable transport capabilities so that they can provide ISP services to their customers using Time Warner's cable plant. In particular, TISPA desires to negotiate a model contract for independent ISPs for access to Time Warner cable plant. I understand from Time Warner Cable's public statements that it is committed to providing this kind of access and to non-discrimination against ISP competitors of the Road Runner service, and it seems certain that agreeing on a model contract would be in the interests of both Time Warner Cable and my client.

I would very much appreciate a call or other contact from you at your earliest convenience to arrange for negotiations and any further discussions that might be appropriate. You can reach me at the numbers and addresses on this letterhead.

Thank you very much for your attention to this matter. TISPA and I look forward to working with Time Warner and successfully negotiating a model agreement.

  
W. Scott McCollough

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Inquiry Concerning High-Speed  
Access to the Internet Over  
Cable and Other Facilities

GN Docket No. 00-185

AFFIDAVIT OF RAYMOND WILLIAMS

Affiant, being duly sworn, states as follows:

1. My name is Raymond Williams. I am President of CyberZone, Inc. an internet provider and located in Marinette, WI and serving Marinette & Oconto Counties Wisconsin as well as Menominee County Michigan.
2. CyberZone competes with Time Warner in the provision of Internet Service. Without access to cable modem service from Time Warner, however, CyberZone will be unable to provide high speed internet service in those areas where DSL service is unavailable. At present, 90 percent of the areas served by CyberZone are not accessible via DSL service.
3. In August CyberZone has requested that Time Warner provide access to their cable modem service, but our requests resulted in an offered service on terms that are grossly less favorable than those it implicitly offers to itself. The FTC already has a copy of the offered Terms and Agreements. An additional copy can be provided upon request.
4. Copies of my correspondence with Time Warner are also available on request, which detail the requests made by CyberZone and the responses to those requests. Phone conversations with Time Warner resulted in an inability by them to even fully explain the terms and agreements they sent CyberZone, Inc.

By

Raymond Williams  
Raymond Williams

Subscribed and sworn to me this 30 day of November, 2000

Pamela S. Grosschadle  
Notary Public

PAMELA S. GROSSCHADLE  
NOTARY PUBLIC  
STATE OF WISCONSIN

My commission expires 6/20, 04